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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Friends in the West

Serial No. 74/584,732

Clark A. Puntigam of Jensen & Puntigam, P.S. for Friends in the West.

Darren B. Cohen, Trademark Examining Attorney, Law Office 101
(Christopher Wells, Managing Attorney).

Before Hanak, Hohein, and Hairston, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Friends in the West has filed an application to register the designation "AFRICAN CHILDREN'S CHOIR" for "charitable fund raising services, featuring a choir".¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis

¹ Ser. No. 74/584,732, filed on October 12, 1994, which alleges dates of first use of January 1985.

that, when used in connection with applicant's services, the phrase "AFRICAN CHILDREN'S CHOIR" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a designation or term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic of feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a designation or term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the designation or term describes a significant attribute or idea about them. Moreover, whether a designation or term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the designation or term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the

mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, referring to the brochures which it submitted as specimens, points out that, as indicated therein, the funds which it raises "are not primarily used to support a children's choir from Africa". Instead, applicant notes, "[t]he funds are used to provide food, shelter and education for needy children in Africa," irrespective of whether the children "sing in choirs or even sing at all." Thus, according to applicant, "[t]he children who sing in the choir are only a small portion of the large number of children receiving the benefits of the funds" which applicant raises and, hence, the designation "AFRICAN CHILDREN'S CHOIR" is not merely descriptive of a characteristic or feature of its services.

Applicant, although conceding that "a choir is in fact used to assist in the rendering of the services," further argues that:

There is no common or typical association in the mind of the consumer between a choir and fund raising services. While the identification of services does use the phrase "featuring a choir," the inclusion of that phrase should not be the basis of a [mere] descriptiveness refusal, since, as indicated above, that aspect (the use of a choir) of the services is ancillary and tangential to the basic thrust of the services, i.e. fund raising services for humanitarian purposes. The participation of a choir in the rendering of such services is not a conventional aspect of such services, nor is it a common characteristic of such services. In this case, when the average customer thinks of fund raising

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services and normal characteristics or
features thereof, the participation of a
choir does not ordinarily come to mind.

In addition, applicant urges that since its mark as a whole must

be merely descriptive of the services identified in its application, "the mark 'African Children's Choir' does not convey an immediate idea of the stated services because, even though such services are set forth as "charitable fund raising services, featuring a choir," the designation "AFRICAN CHILDREN'S CHOIR" "suggests absolutely nothing about fund raising services". Applicant consequently maintains that in the absence of "a descriptive connection between African Children's Choir as a whole and fund raising services," such designation is not merely descriptive of its services.

We agree with the Examining Attorney, however, that the designation "AFRICAN CHILDREN'S CHOIR" immediately describes, without conjecture or speculation, a significant aspect or feature of applicant's fund raising services, namely, the African children's choir which, as the Examining Attorney accurately observes, "serves as the focal point of the fund raising activities" provided by applicant. As the Examining Attorney correctly points out, it is not necessary that a designation or term describe every characteristic, feature, purpose, function ingredient, quality or other aspect of the services in order for it to be merely descriptive. It is sufficient, instead, if the designation or term simply describes one significant attribute of the services. See, e.g., In re Aid Laboratories, Inc., 223 USPQ 357, 358-59 (TTAB 1984); In re H.U.D.D.L.E, 216 USPQ 358, 359 (TTAB 1982); and In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973).

Here, that a choir of children from Africa serves as a significant element of applicant's services, rather than simply a ancillary and tangential aspect thereof, is evidenced not only by the fact that the services are specifically identified as "charitable fund raising services, featuring a choir," but by the fact that the specimens of record prominently and repeatedly feature references to applicant's African children's choir as the focal point of applicant's fund raising activities. Admittedly, as pointed out by applicant, its brochures state that applicant "cares for more than 700 needy, homeless African children in family-like homes" by providing "food, shelter and education to children with no other chance of survival" and that it also provides "literacy schools for many other children who don't live in our homes." However, applicant's brochures also indicate that a significant feature of its charitable fund raising services revolves around and is centered upon the performances presented by its African children's choir.

In this regard, we observe that, in addition to listing a telephone number which a person may call "[f]or more information, or to find out about having the African Children's Choir perform for your church or organization," the brochures state that applicant is "the choir's parent organization"; that "[t]he purpose of the African Children's Choir is to help create new leadership for tomorrow's Africa"; that "[c]hoir members have the additional benefit of international travel with the choir which exposes them to a wide variety of people, places and perspectives"; that contributors can "[v]olunteer to help with

the African Children's Choir"; that donors can "[c]ommit a monthly amount as a 'Friend of the Children' choir sponsor"² to "provide the choir children with clothing, food and educational materials, as well as help with the choir's travel and medical expenses"; and that audiences "can see joy in every performance of the African Children's Choir!"

Clearly, as shown by the specimen brochures, the African children's choir which applicant sponsors constitutes a significant, if not *the* significant, feature of its fund raising services since the choir functions as an integral part of such services, acting both as a draw for and a recipient of the charitable contributions raised by applicant. The asserted fact that applicant's services are unconventional, in the sense that the participation of a choir is used in the rendering of its services, is not only unsupported by any evidence that appearances by a choir are unusual in connection with fund raising activities, but even if such is the case, such a fact is not dispositive where, as here, the designation "AFRICAN CHILDREN'S CHOIR" unequivocally projects a merely descriptive connotation. See *In re MBAssociates*, supra. As the Examining Attorney persuasively points out: "[T]he featured characteristic of the services, and, indeed, the unique quality of these charitable services, is that a choir, specifically, a children's choir from Africa, serves as the focus of the fund raising."

² Besides inviting donors to "become a CHILD SPONSOR by giving \$25 per month per child," the brochures separately set forth an invitation for donors to "become a FRIENDS OF THE CHILDREN month choir sponsor."

Accordingly, because the designation "AFRICAN CHILDREN'S CHOIR" conveys forthwith a significant feature of applicant's charitable fund raising services, namely, the African children's choir featured in conjunction therewith, such term is merely descriptive within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.

E. W. Hanak

G. D. Hohein

P. T. Hairston
Administrative Trademark Judges,
Trademark Trial and Appeal Board